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9 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**

10 **FOR THE COUNTY OF MULTNOMAH**

11 **ALICIA LINTNER**, Personal Representative) Case No.
12 of the Estate of **DEBBIE LEE DALTON**,)
13 Deceased,) **COMPLAINT**
14)
15) Personal Injury – Negligence –
16 Plaintiff,) Premises Liability – Survival Action
17) (ORS 30.075)
18)
19) (Not Subject to Mandatory Arbitration)
20) (Demand for Jury Trial)
21 **WALMART INC. dba**)
22 **WALMART #1784**, a Foreign Corporation,) Fee Authority: ORS 21.160(1)(d)
23)
24 Defendant.) Amount in Controversy: \$1,097,350.18.
25

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20 Plaintiff alleges:

21 1.
22 At all relevant and material times herein:

23 a) Plaintiff Alicia Lintner is the duly appointed and acting Personal
24 Representative for the Estate of Debbie Lee Dalton, deceased, pursuant to
25 a Limited Judgment dated March 3, 2020, entered in the Circuit Court of
the State of Oregon for the County of Marion, Probate Department Case
No. 20PB01596;
26 b) Plaintiff's decedent Debbie Lee Dalton was survived by Richard Dean
Dalton, husband, Michelle Gomez, daughter, and Alicia Lintner, daughter;

10 e) Defendant Walmart owned, controlled, leased, and/or operated retail
11 business property located at 3025 Lancaster Drive NE, city of Salem,
county of Marion, state of Oregon (hereinafter referred to as the "SALEM
STORE").

12 2

13 On or about October 12, 2018, plaintiff's decedent Debbie Lee Dalton, ("PLAINTIFF'S
14 DECEDENT" or "MS. DALTON") was a 61-year-old business patron at the above-described
15 Salem Store. Defendant Walmart owned, maintained, and/or controlled the Salem Store,
16 including all store-supplied assistive devices therein, such as store wheelchairs which are
17 intended for the use of its patrons while shopping.

18 3.

19 On October 12, 2018, Ms. Dalton arrived at defendant Walmart's Salem Store in a van. Ms.
20 Dalton was accompanied by her grandson and two family friends who often assist Ms. Dalton while
21 she shops. Ms. Dalton suffered from COPD, was on full-time supplemental oxygen, and had
22 recently been hospitalized due to swelling in her legs. Because of her health conditions, Ms. Dalton
23 required the use of a wheelchair while shopping.

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2 Ms. Dalton asked her grandson to go into the store and get a store-provided “wheelchair
3 cart” and to bring it back to the van. Ms. Dalton’s grandson went inside the Salem Store and asked
4 the greeter at the front of the store if there were any wheelchairs available. The Walmart greeter
5 said yes, and pointed Ms. Dalton’s grandson to a nearby wheelchair, which appeared to be the only
6 one remaining.

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8 The single remaining wheelchair was a “Sit & Shop” wheelchair that had a shopping basket
9 in the front and between the arm rests that could be pulled up to allow the user to access the seat.

10

6.

11 Ms. Dalton’s grandson retrieved the “Sit & Shop” wheelchair, pushed the chair outside, and
12 placed it just outside the passenger door of the van where Ms. Dalton was sitting. Ms. Dalton’s
13 grandson had helped Ms. Dalton get in and out of wheelchairs many times before, and knew that
14 because of Ms. Dalton’s health conditions, the wheelchair needed to be stable while she transferred
15 to the seat.

16

7.

17 Ms. Dalton’s grandson engaged the wheel brakes so the wheelchair would be stable and
18 would not roll backwards. Ms. Dalton exited the van and, with the basket of the wheelchair pulled
19 up, she leaned on the wheelchair to transfer herself into the seat. However, the moment Ms. Dalton
20 sat in the seat, the wheelchair collapsed. Ms. Dalton fell onto to the parking lot pavement and her
21 leg split open. The wheelchair shopping basket tumbled down over her scraping and cutting her
22 arms and legs. The wheelchair collapse caused Ms. Dalton to suffer multiple injuries, including
23 several large skin tears and muscle-deep lacerations on her arms and legs, as described in more
24 detail below.

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2 An off-duty nurse who happened to be nearby came to Ms. Dalton's assistance. Ms. Dalton
3 was bleeding profusely from her wounds and her grandson and family friends were scrambling to
4 find some towels in the van to stop the bleeding. 9-1-1 was called and an ambulance arrived on the
5 scene.

6

9.

7 After the ambulance arrived, several Walmart employees came out of the Salem Store to
8 observe what was happening, but none of them interacted with the Dalton group. Ms. Dalton's
9 grandson watched the employees; one employee appeared to be angry, admonishing the others for
10 allowing customers to use a "faulty cart." Daniel Hart, the driver of the van, saw one employee
11 saying emphatically to another that the wheelchair "shouldn't have been out on the floor." Mr. Hart
12 got the impression that the Walmart employees may have known the wheelchair was not working
13 correctly. Ms. Dalton was transported by ambulance from the Salem Store to the emergency
14 department at Salem Hospital where she was treated for the skin tears and lacerations she sustained
15 during the fall.

16

10.

17 Within a few hours after the fall, Richard Dalton, Ms. Dalton's husband, went to the Salem
18 Store and asked an employee about Ms. Dalton's incident. One employee denied that any incident
19 had happened that day. Mr. Dalton then asked to speak to a Person in Charge (PIC), and when the
20 PIC arrived, Mr. Dalton explained that he knew there had been an accident because it was his wife
21 who got hurt. Mr. Dalton, the PIC, and an employee who was at the store at the time of the incident
22 went to an office in the Salem Store to review security camera footage from earlier in the day.

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1 11.

2 The PIC and the Walmart employee did not invite Mr. Dalton into the office, so Mr. Dalton
3 watched the video playback while looking in from the doorway. Initially, the employees said the
4 video did not show anything, but when Mr. Dalton saw an ambulance appear on the screen, he asked
5 the employees to back up the video. The Walmart employees backed up the video and eventually
6 the three of them watched the wheelchair collapse on Ms. Dalton.

7 12.

8 The PIC and the Walmart employee backed up the video further and saw Ms. Dalton's
9 grandson enter the Salem Store and later emerge with the "Sit & Shop" wheelchair. The Walmart
10 employee asked the PIC whether the Salem Store had wheelchairs like the one in the video, and the
11 PIC responded yes.

12 13.

13 After Mr. Dalton, the PIC, and the Walmart employee finished watching the security
14 footage, they went to the store floor and saw the wheelchair that Ms. Dalton used earlier in the day
15 still on the floor. They pulled the wheelchair out and unfolded it. When Mr. Dalton placed weight
16 on one side of the chair, the wheelchair collapsed. Mr. Dalton explained that wheelchairs are
17 designed for handicapped people who are a vulnerable population that cannot always control their
18 body movements or balance when transferring to the wheelchair. The Walmart employee then
19 instructed the PIC to remove the wheelchair from the floor because it was dangerous.

20 14.

21 The following day, Mr. Dalton returned to the Salem Store to see if the "Sit & Shop"
22 wheelchair was still on the floor. When he arrived, he saw the wheelchair in the same place he had
23 seen it the day before. Mr. Dalton went to the Salem Store again the following day, and again saw
24 the wheelchair on the floor, along with another wheelchair that appeared to be the same "Sit &
25 Shop"-style by another entrance of the store.

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1 15.

2 From October 12, 2018 through January 7, 2020, Ms. Dalton suffered complications from
3 recurring wound infections, and ultimately died from endocarditis on January 7, 2020.

4 16.

5 Defendant Walmart had a duty to exercise reasonable care to make the Salem Store
6 premises reasonably safe for its patrons, including plaintiff's decedent Dalton. This duty includes
7 the obligation to inspect for and warn patrons of latent dangers on the Salem Store premises that
8 were known, or in the exercise of reasonable care should have been known, to defendant
9 Walmart, and to take reasonable action to protect patrons from the foreseeable and unreasonable
10 risk of harm and/or to eliminate said unreasonably dangerous conditions.

11 17.

12 Defendant Walmart, by and through its employees or agents, working in the course and
13 scope of their employment at the Salem Store, were responsible for reasonably inspecting,
14 maintaining, and/or verifying for safety the Walmart store-supplied wheelchairs before the
15 wheelchairs were provided to patrons for use while shopping.

16 18.

17 Defendant Walmart knew, had reason to know, and/or in the exercise of reasonable care
18 should have known that the potentially hazardous store-supplied wheelchairs, which are used by
19 patrons to shop, including patrons who are a part of a vulnerable population, could collapse and
20 create an unreasonable risk of harm to patrons.

21 19.

22 Defendant Walmart did not warn patrons, including Ms. Dalton, of the danger associated
23 with using a store-supplied wheelchair or that the wheelchair could collapse. There were no
24 safety cones or warning signs at or near the store wheelchairs, or where Ms. Dalton fell, advising
25 patrons of potentially hazardous risk of collapse while transferring to and/or using a store-
26 supplied wheelchair.

1 20.

2 Defendant Walmart, acting independently and/or by and through its employees or agents,
3 was negligent and/or breached its duty of care in one or more of the following ways which led
4 to the injuries of plaintiff's decedent:

5 a) In failing to exercise reasonable care to inspect and order the removal of
6 potentially hazardous wheelchairs in the Salem Store, which are intended to
be used by patrons to shop;

7 b) In failing to conduct periodic inspections of the wheelchairs in the Salem
8 Store, which are intended to be used by patrons to shop, to determine whether
or not any potentially hazardous conditions existed related to the use of the
wheelchairs;

9 c) In failing to remove the potentially hazardous wheelchair that Ms. Dalton used
10 on the date of her fall;

11 d) In failing to maintain reasonably safe premises, specifically in inspecting,
12 maintaining, testing, or verifying the safety of store-supplied wheelchairs,
13 which patrons use to shop, thereby creating an unreasonably dangerous and
reasonably foreseeable risk of harm, at a time when defendant knew, or, in
the exercise of reasonable care, should have known, about said hazardous
condition;

14 e) In failing to warn customers in general, and Ms. Dalton in particular, of the
15 dangerous condition on the premises at a time when defendant knew, or, in
the exercise of reasonable care should have known, of the presence of the
unreasonably dangerous and reasonably foreseeable risk of harm created by
the hazard;

16 f) In failing to post adequate instructions near where the wheelchairs are
17 stored, or prominently displayed as a decal on wheelchairs themselves, in
the Salem Store, regarding safe use of such wheelchairs, which are intended
to be used by patrons to shop;

18 g) In failing to carry out reasonable inspections of the premises in order to
19 discover unreasonably dangerous conditions, which reasonable inspections
would have revealed the presence of said dangerous conditions;

20 h) In failing to adequately train and/or instruct employees to inspect for and/or
21 recognize the unreasonably dangerous condition presented by the store-
supplied wheelchairs and/or to verify the safety of the wheelchairs, which
22 patrons use to shop.

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1 21.

2 The negligence and/or fault of defendant Walmart, in one or more of the ways set forth
3 above, was a substantial factor in causing, contributing to, aggravating, and/or exacerbating the
4 following injuries to plaintiff's decedent:

5 a) 5 cm laceration to the right forearm;
6 b) 2 cm by 3 cm skin tear to the right upper arm;
7 c) 6 cm by 3cm laceration to the left forearm;
8 d) 6 cm wide by 10cm long laceration to the left knee;
9 e) Hematoma of the left lower abdomen;
10 f) Hemorrhage of the left lower abdomen;
11 g) Abdominal wall abscess;
12 h) Abdominal pain;
13 i) Exposed fat tissue;
14 j) Bleeding;
15 k) Multiple wound infections.

16 22.

17 As a result of the aforementioned injuries, plaintiff's decedent underwent the following
18 medical and surgical procedures:

19 a) Laceration repair of the right forearm;
20 b) Laceration repair of the left forearm;
21 c) Lower left quadrant abdomen abscess debridement.

22 23.

23 The fault and/or negligence of defendant, in one or more of the particulars set forth herein,
24 caused plaintiff's decedent to incur disability, pain, and suffering during the period between the
25 time of her fall and the time of her death, thereby entitling the estate to an award of noneconomic
26 damages in the sum of \$1,000,000.00.

1 24.

2 In addition, the fault and/or negligence of defendant, in one or more of the particulars set
3 forth herein, caused plaintiff's decedent to incur reasonable and necessary medical, hospital,
4 ambulance, and related expenses between the time of her injury and the time of her death in the
5 sum of \$97,350.18, thereby entitling the estate to an award of economic damages in that amount.

6 25.

7 Plaintiff reserves the right to amend this Complaint to seek punitive damages.

8 26.

9 Plaintiff reserves the right to amend this Complaint at the time of trial to more completely
10 allege economic losses, including medical expenses, and/or to conform to proof offered at trial.

11 27.

12 Plaintiff hereby demands a jury trial.

13 WHEREFORE plaintiff prays for judgment against defendant as follows:

14 (a) Non-economic damages of \$1,000,000.00;

15 (b) Economic damages in the following amounts:

16 a. Past medical expenses of \$97,350.18;

17 (c) Reasonable attorney fees pursuant to ORS 30.075;

18 (d) For pre-judgment interest at the legal rate of 9% per annum for her economically
19 verifiable losses from the date of loss to the date of entry of judgment herein; and

20 (e) For such other relief as the court deems just and equitable.

21 DATED this 1st day of July, 2021.

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